

Remarks

These remarks are being submitted in response to the Office Action mailed in this application on February 19, 2009. A request for a one-month extension of time and a Notice of Appeal accompany this Response. Claims 5, 6, 8-10, 14, 15 and 18-20 are pending in this application. Reconsideration of this application is respectfully requested.

First, the Office Action Summary and the Detailed Action refer to a communication from Applicants filed on 17 December 2008. Nothing was filed by Applicants on that date. Clarification of the record is requested, especially if the Response filed on November 13, 2008, was not considered.

Turning to the Action on the merits, claims 5, 6, 8-10, 14, 15 and 18-20 were once again rejected under 35 U.S.C. §103(a) as being unpatentable over the combination of EP0666081 ('081), U.S. Patent No. 3,788,521 ('521) and U.S. Patent No. 3,976,223 ('223). Applicants continue to traverse this rejection.

The Action appears to indicate a continued misunderstanding of the invention and a continued reformulation of a prior rejection. While '081 does disclose a gel, '081 does not disclose a method of, and a vessel for, safely and efficiently dispensing multiple doses of wound-treating gel where the gel is in gel form in the container, and the vessel's self-sealing characteristic minimizes the contamination of the gel after the use of the vessel.

'223 is cited allegedly to show an aerosol container containing a gel. However, the purpose of the package of '223 is to separately store a plurality of flowable substances in a single package from which such substances may be dispensed. According to '223, only the lower chamber of the outer container is pressurized with a gas through a self-sealing plug in the container bottom. See, *e.g.*, column 2, lines 53-57. Since only the lower chamber of the outer container of '223 is pressurized with a gas through a self-sealing plug, the container in '223 is not self-sealing as required in the rejected claims. Moreover, it is submitted that '223 does not address the avoidance of contamination during use. Rather, any avoidance of contamination appears to be with respect to storage. See, *e.g.*, column 5, lines 23-32 and column 6, lines 8-13.

The addition of '521 does not make up for the deficiencies of the other two documents. It is cited in the specification as showing one example of the general "type" of vessel used. However, as noted in the Action, '521 does not teach delivering gel. The problem addressed by '521 concerns overrun which means that the amount of product dispensed varies as the container empties, and it often means that product remains in the container that cannot be dispensed. The user requirements thus broadly concern emptying the container and having a uniform product dispensed. Applicants' invention is concerned with packaging a gel so that the packaging can be used to dispense more than one dose without compromising the sterility of the remaining doses. These user requirements are very different. Moreover, one of ordinary skill in the art at the time the invention was made did not put wound gels in barrier aerosol containers and would not look to the hair coloring/shaving cream art of '521.

It is asserted in the Action that this is simply an argument against the references individually. However, contrary to that position, Applicants submit that they *must* provide comments on the cited art. Explaining the inapplicability of a piece of art does not, in and of itself, mean Applicants are arguing that piece by itself.

Further, according to the Action, "US '223 is relied upon for teaching gel can be delivered from a pressurized aerosol container." Applicants have explained why the actual teaching of US '223 is inapplicable here. As noted above, the purpose of the package of '223 is to separately store a plurality of flowable substances in a single package from which such substances may be dispensed. To say that "[I]t necessary (*sic*) follows from the teaching of EP '081 and US '223 that one would use (*sic*) single compartment vessel when there was no issue of reactivity or degradation of components of the composition" guts the whole teaching of US '223. While it may be "proper to take into account not only the specific teachings of the references but also the inferences which one skilled in the art would reasonably be expected to draw therefrom", one cannot gut the actual teachings of the references to combine them for some superficial notion. It cannot be casually argued that the rational to combine teachings "may be expressly or impliedly contained in the prior art" when the rational is neither. This is the situation here.

Consequently, the combination of EP '081 and US '223 cannot teach what it is argued in the Action to teach. Then, throwing in US '521, which actually shows one example of the general "type" of vessel used, does nothing to rehabilitate what is not taught by the combination of EP '081 and US '223. In view of all that, the combination of EP '081, US '223 and US '521 cannot teach the claimed invention to one of ordinary skill in the art.

Moreover, one of ordinary skill in the art of wound care would not be expected to be skilled in the non-analogous art of barrier aerosol vessels. As already discussed above, the invention in '521 is directed at dispensing foaming compositions such as those used in hair coloring or shaving cream. The user requirements in wound care are not comparable to the user requirements in hair coloring or shaving cream. For instance, again as noted above, the problem addressed by '521 concerns overrun which means that the amount of product dispensed varies as the container empties and often means that product remains in the container that cannot be dispensed. The purpose of the inventors of '521 was to provide better dispensing of hair colorants and shaving cream. The user requirements in the hair coloring or shaving cream field noted in '521 broadly concern emptying the container and having a uniform product dispensed. Applicants' invention is concerned with packaging a gel so that the packaging can be used to dispense more than one dose without compromising the sterility of the remaining doses. Clearly, this purpose and these user requirements are very different and non-analogous.

Accordingly, one of ordinary skill in the art of wound care would not combine the documents as they were combined in the Action.

For all these reasons, Applicants request that this rejection be withdrawn.

In view of the foregoing, reconsideration of this application, withdrawal of the rejection and allowance of the application with all the pending claims are respectfully requested.

Respectfully submitted,

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